IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 2548 of 2007

Date of decision : July 11, 2007

Sadhu Singh

... Petitioner

versus

Jatinder Mohan and others

... Respondents

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Akshay Bhan, Advocate
for the petitioner.

Mr. K.S. Cheema, Advocate
for the respondents.

A.N. Jindal, J.

This revision petition under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') is directed against the judgment dated 20.3.2007 passed by the learned Appellate Authority Hoshiarpur, dismissing the appeal of the petitioner-tenant (hereinafter referred to as 'the petitioner') against the order dated 17.1.2006 passed by the learned Rent Controller, Hoshiarpur allowing the application for ejectment of the petitioner. Admittedly, the respondents are the landlords of the house as fully described in the head note of the petition and the petitioner is the tenant in the said house since long @ Rs.5/- per month.

The respondents sought ejectment of the petitioner on the grounds of none payment of rent, personal necessity and that the premises

being in dilapidated condition, have become unfit and unsafe for human habitation. The allegations as made by the respondents were controverted by the petitioner, by way of the reply filed by him out of which following issues were emerged, vide order dated 29.5.1986 :-

1. Whether the tender made by respondent No.1 is short and invalid?OPA
2. Whether the house in dispute is in dilapidated condition? OPA
3. Whether the applicant requires the premises in dispute for their personal use and occupation?OPA
4. Whether there is a relationship of landlord and tenant between the parties?OPR
5. Whether the site plan filed by the applicants is incorrect? OPR
6. Relief.

Again the following additional issues were framed by the learned Rent Controller, vide its order dated 3.12.1986 :-

1. What is the effect of the previous litigation between the parties?OPP
2. Whether the tender made by the respondent is subject to the decision of the Hon'ble High Court?OPD

Both the parties led evidence in support of their respective contentions. The applicants-respondents examined Rakesh Kumar (AW1), Paramjit Bali, Advocate (AW2), Kuldip Walia, Advocate (AW3), Surinder Mohan (AW4), Nem Kumar (AW5), Varinder Nath Ranjan (AW6), Mangat Ram Sharma, Advocate (AW7) and A.K. Gupta, Advocate (AW8).

To the contrary, the petitioner-tenant examined G.S. Council (RW1), Dharam Chand (RW2), Harkishan Singh (RW3) and Sadhu Singh petitioner himself stepped into the witness box as RW-4.

Since the tender was found valid, therefore, issue No.1 was decided against the respondents-landlords. The trial Court while holding that the house in dispute was in dilapidated condition observed that it was unfit and unsafe for human habitation and the respondents require the premises for their personal necessity, decided both the issues in favour of the respondents. Further, while holding that there was a relationship of landlord and tenant between the parties and there was no defect in the site plan decided issues No.4 and 5 in favour of the landlords-respondents. The additional issue were also decided along with issues No.1 and 4 accordingly.

The learned Appellate Authority upheld the order of ejectment vide judgment dated 20.3.2007. Hence this revision petition.

There is no dispute with the fact that the petitioner Sadhu Singh was the tenant under Prem Chand @ Rs.5/- per month and after his death, he started paying rent to the heirs of Prem Chand i.e. Kamla Devi his widow and Kuldeep Sharma, his son and others. The present respondents are the vendees of the previous landlords, as such not much dispute has been raised by the learned counsel for the petitioner regarding relationship of landlord and tenant between the parties. As regards deficient tender, the landlords did not dispute if the tender was invalid. Marathon arguments have been raised by the learned counsel for the petitioner-tenant in order to assail the findings on the issues of personal necessity and that building being unfit and unsafe for human habitation. Sufficient evidence has been led to establish that the family of the respondents is much large. The petitioner-tenant Sadhu Singh while appearing in the witness box as RW-4 has

admitted that the landlords are four brothers and had an unmarried sister. Their mother was also alive when the ejectment petition was filed. All the four brothers are married. The elder brother has two sons and three daughters and all are school going. The second brother has one son, the third brother has got one son and two daughters, and the fourth brother has two sons. All of them got married during the pendency of the ejectment petition in 20 years. It has also been urged that the daughters of the landlords who are married also require separate accommodation at the time of their visit to the parental house, whereas, the present accommodation in possession of landlords consists of only four bed rooms. Harkishan Singh (RW3) Draftsman, who appeared on behalf of the tenant also admitted the aforesaid fact. The Court can well assess that the premises consisting of four bed rooms is quite insufficient for such a huge family comprising of more than 20 members. The Rent Controller as well as the learned Lower Appellate Authority has concurrently observed that the accommodation presently available with the landlords is quite insufficient.

As regards building of the two houses by the landlords during the pendency of the rent application as well as other litigation regarding premises in question for the last 20 years, does not in any way affect or vanish the genuine need of the landlords. The construction if raised during the pendency of the petition does not change the need of the landlord to use the premises in dispute for their own occupation. The respondents during the pendency of the litigation could not be supposed to be on rent or wondering on the roads keeping in view the expanding of the family with the passage of time. The respondents-landlords have also proved on file the

income tax returns Ex.A1 to Ex.A13 in order to show their living standard. An effort has been made by the petitioner to bring on record the subsequent construction made by the landlords by way of constructing two houses, but the same was declined by the Appellate Authority and the Hon'ble High Court also refused to interfere. The petition for ejectment was filed on 23rd September, 1985 and the same has been pending since then.

The claim of the petitioner cannot be said to be bonafide inasmuch as, earlier, he claimed ownership over the property on the basis of an agreement dated 18.6.1972 but he lost the same before the lower Court. The first appeal and the regular second appeal filed by him were also dismissed. Thereafter, he has also been prolonging the rent petition on one pretext or the other.

At the cost of repetition with regard to ground of personal necessity, the landlord is the best judge of his need and the Court cannot go into the same unless it is proved that the claim of the petitioner is exaggerated. A similar view was taken in case ***Ashwani Kumar and others vs. Pardeep Kumar and others, 2005 (1) RCR 634*** wherein it was observed as under :-

> *"8. Lastly, it would not be out of place to observe that the landlord is the best judge of his own requirements. It has been so held by the Apex Court in numerous authorities. The tenant cannot dictate him the way how to live. It is for the landlord himself to see as to what accommodation is needed by him and his family."*

The learned Rent Controller as well as the Appellate Authority on appreciation of the evidence in right perspective, have rightly observed that the volume of the family is such that they require at least 20 rooms to

cater to their need as well as the need of their children and they also require separate accommodation for the daughters when they visit them. The demised premises is situated in the middle of the city and it is convenient to visit commercial area and it is also easily approachable to the bus stand as well as railway station, whereas the houses built by the landlord out of compulsion during the pendency of the litigation are at a long distance and cannot be said to be convenient to them. As such the landlords cannot be compelled that they must settle their children and remain far away from the city. In the given circumstances of the case, this Court does not find any such evidence worth the name on the record for deviating from the concurrent observations made by both the Courts below.

Now coming to the other argument raised regarding the ground of the building being unfit and unsafe for human habitation, one of the landlords Surinder Mohan (AW4) testified that the petitioner is in possession of two rooms and one verandah with tin roof. The roof of one room of the tenant had fallen down and he replaced the same during night. The battons of the second room in possession of Sadhu Singh had bent down towards earth and has been eaten by while ants. The roof of other room is in dilapidated condition, full of dampness and it can fall at any time. In order to strengthen his averments the landlord proved the report of the Local Commissioner examined in Civil Suit No.262 of 1985 titled as Jatinder Mohan vs. Sadhu Singh. The report dated 17.9.1985, which was made in the presence of Surjit Kaur wife of Sadhu Singh, Kuldeep Kaur daughter of Sadhu Singh and Kishan Singh relative of Sadhu Singh, reveals that the roof of one room which is 20 feet in length was partly changed by

affixing new ballas. This roof is divided into four khans. In the first khan, 6 new battons have been affixed in place of old battons and remaining 9 battons are bending and are in dilapidated condition. In the second khan, 10 new battons have been affixed in place of old battons and the condition of remaining 5 battons was also the worst and were in bending condition. He also noted that few battons in the third khan have been repaired by placing brackets etc.

Besides the aforesaid report, in an ejectment petition filed by the landlords against the adjoining tenant of the property in dispute, Mr. H.P. Handa, the then learned Rent Controller, Hoshiarpur in case titled Jatinder Mohan vs. Hukam Chand decided on 21.12.1987 (Ex.AY/1) held that the premises was unfit and it was observed by the High Court that the same was required by the landlords for their personal use and occupation since part of the building has already been held to be unfit and unsafe for human habitation, therefore, the present premises being part of the one integrated building will also be deemed to be unfit and unsafe for human habitation. The factum with regard to the moving of the application by the petitioner before the High Court for seeking permission for repairing or replacing of the roof, which resulted into dismissal also indicates that this Court did not allow to conduct the major repairs of the property in dispute obviously for the reasons that it had become unfit and unsafe for human habitation. In the circumstances, if the petitioner conducted any repairs without permission of the Court will not undo or vanish the ground of unfit and unsafe for human habitation.

Having perused the judgments rendered by the courts below, no

such impropriety or illegality has been detected or smelt, which may render the judgment to be perverse, unreasonable, perfunctory or against the records.

It is true that under Sub-section (5) of Section 15 of the Act revisional power of this Court should not be used in a routine manner. However, in cases where conclusions recorded by the Appellate Authority are perverse or not possible to be accepted on the material placed on record then there is no bar on the exercise of such power. The argument of the learned counsel has to be examined in the light of the view taken by Supreme Court in **Molar Lal vs. Kay Iron Works (P) Ltd.,** *2000(1) RCR (Rent) 354(SC).* In that case Sub-section (6) of Section 15 of the Act was considered and the views of their Lordships read as under:-

> "Similarly, we are of the opinion, on the facts and circumstances of this case, the argument of the tenant that the High Court exceeded its jurisdiction by interfering on a finding of fact arrived at by the appellate authority is also to be rejected. It is to be noticed that under sub-section (6) of Section 15 of the Act, the High Court as a revisional authority has the power to call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order and is entitled to pass such order as it may deem fit. The power vested in the High Court under the provision of law is much wider than the power conferred on the High Court under Section 115 CPC. In the process of satisfying itself as to the

> legality or propriety of an impugned order, the High Court in a given case can go into the finding of fact arrived at by the courts below and, if found necessary, reverse such a finding of fact. Of course, this Court has in many cases cautioned that this power is not to be used as a revisional court in a routine manner but to be used only when the revisional Court comes to the conclusion that the last court of fact has arrived at a conclusion which is perverse or not possible to be accepted on the materials placed before it. In other words, if the High Court comes to the conclusion that the finding of the first appellate court is based on no evidence then in a given case it is open to the High Court to interfere with such finding of fact. In the instant case, we are not convinced that the High Court has exceeded its jurisdiction while allowing the revision of the landlord on this count. Therefore, this question urged on behalf of the appellant is also rejected. (*emphasis added*)."

On perusal of the aforesaid observations of the Supreme Court, the necessary conclusion can be drawn that is revisional court can interfere in the concurrent findings returned by the courts below when;

(i)the findings are perverse, bald and without evidence;

(ii)findings are based on perfunctory or superfluous approach;

(iii)findings are wholly unreasonable.

The findings cannot be reversed merely because a view different from the view recorded by the lower court is possible. The power of revision under sub-Section (6) of Section 15 of the Act does not extend to

power of regular appeal. The Appellate Authority for the very good reasons reached the conclusion that the landlords required the premises for their personal necessity and the premises have become unfit and unsafe for human habitation. As such, no interference could be made at the revisional stage.

For the foregoing reasons, this revision petition being devoid of any merit is dismissed.

July 11, 2007 (A.N.JINDAL)
deepak JUDGE

To be Referred to Reporter - **Yes/ No**